

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS)
ELECTRIC CORPORATION FOR:)
(I) APPROVAL OF WHOLESALE TARIFF)
ADDITIONS FOR BIG RIVERS ELECTRIC) CASE NO. 2007-00455
CORPORATION, (II) APPROVAL OF)
TRANSACTIONS, (III) APPROVAL TO ISSUE)
EVIDENCES OF INDEBTEDNESS, AND)
(IV) APPROVAL OF AMENDMENTS TO)
CONTRACTS; AND)
OF E.ON U.S., LLC, WESTERN KENTUCKY)
ENERGY CORP. AND LG&E ENERGY MARKETING,)
INC. FOR APPROVAL OF TRANSACTIONS)

PETITION FOR CONFIDENTIAL TREATMENT

E.ON U.S., LLC (“E.ON U.S.”), Western Kentucky Energy Corp. (“WKEC”) and LG&E Energy Marketing Inc. (“LEM”) (the “E.ON Entities”), by counsel, for their Petition for Confidential Treatment filed pursuant to 807 KAR 5:001, Section 7 and KRS 61.878(1)(c), state as follows:

BACKGROUND

By this Petition, the E.ON Entities request that the Public Service Commission (“Commission”) grant confidential protection to certain information filed in response to data requests herein on the grounds that the information is confidential and proprietary and pertains to nonregulated businesses only. Specifically, the E.ON Entities petition the Commission to grant confidential protection to the answers to Data Requests 83, 100, and 101 in the Response of E.ON U.S., LLC to the Attorney General’s Initial Request for Information Dated February 1, 2008.

GROUNDS FOR PETITION

1. KRS 61.878(1)(c) protects commercial information, generally recognized as confidential or proprietary, if its public disclosure would cause competitive injury to the disclosing entity. Competitive injury occurs when disclosure of the information would give competitors an unfair business advantage. The Commission has taken the position that the statute and the regulation require the party requesting confidentiality to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed. Here, there is actual competition, as the information in question concerns confidential and proprietary information related to nonregulated businesses that are competitive and that are not rate-protected by the regulatory compact. The confidential business information disclosed to the Commission in this case in response to Data Request 83 (concerning its amount paid to the Smelters in consideration for consent to the transactions at issue), Data Request 100 (concerning the E.ON/LEM view of operating budgets, including costs and revenues), and Data Request 101 (concerning the E.ON Entities' capital budget) is the type of information which would enable the E.ON Entities' competitors to discover, and make use of, confidential information concerning its financial condition and business strategies, to the unfair competitive disadvantage of the E.ON Entities.

2. The information for which confidential treatment is sought is maintained internally by the E.ON Entities and by other parties to this case who have a business need to know this information. This information is not on file with the FERC, SEC or other public agency, is not available from any commercial or other source outside of the E.ON Entities and the parties to this case with a business need to know this information, and is limited in

distribution to those employees who have a business reason to have access to such information. Further, the information concerns nonregulated rather than regulated activities. Thus, the public interest to be served by its disclosure is minimal at best. By imposing unfair competitive injury upon the E.ON Entities, disclosure in fact harms the public interest.

3. Disclosure of the information sought to be protected in this matter would make available to the E.ON Entities' competitors information concerning its financial and business strategies, and its costs and revenues, that such competitors could use to the E.ON Entities' competitive disadvantage. The E.ON Entities' competitors are not required to file, or to make public, similar proprietary information.

4. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878(1)(c)1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878(1)(c)1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of

the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here.

5. The confidential information clearly merits confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878(1)(c)1. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of the E.ON Entities and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

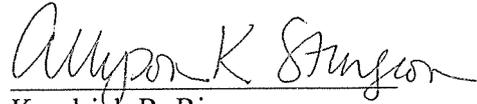
6. The E.ON Entities have provided the information for which confidential treatment is sought to the Attorney General pursuant to a protective agreement.

7. In accordance with the provisions of 807 KAR 5:001(7), the E.ON Entities file herewith, under seal, one (1) highlighted set of the confidential information provided in response to Attorney General Data Requests 83, 100, and 101, and also file on this date an original and ten copies of the Response of E.ON U.S., LLC to the AG’s Initial Request for Information Dated February 1, 2008, in redacted form for filing in the public record.

CONCLUSION

For the reasons stated, the E.ON Entities respectfully request that the Commission grant confidential protection for the information at issue, or schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,



Kendrick R. Riggs
Deborah T. Eversole
Douglas F. Brent
STOLL KEENON OGDEN, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 560-4222

Allyson K. Sturgeon
Senior Corporate Attorney
E.ON U.S. LLC
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232
Telephone: (502) 627-2088

CERTIFICATE OF SERVICE

It is hereby certified that this 14th day of February, 2008, I have served the foregoing by U.S. Mail, postage prepaid, upon the following:



Counsel for E.ON U.S. LLC,
Western Kentucky Energy Corp., and
LG&E Energy Marketing Inc.

C William Blackburn
Big Rivers Electric Corporation
201 Third Street
P. O. Box 24
Henderson, KY 42420

Honorable Michael L Kurtz
Attorney at Law
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202

David Brown
Stites & Harbison, PLLC
1800 Providian Center
400 West Market Street
Louisville, KY 40202

Honorable James M Miller
Attorney at Law
Sullivan, Mountjoy, Stainback &
Miller, PSC
100 St. Ann Street
P.O. Box 727
Owensboro, KY 42302-0727

Honorable Dennis G Howard II
Assistant Attorney General
Office of the Attorney General
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

Melissa D Yates
Attorney
Denton & Keuler, LLP
555 Jefferson Street
P. O. Box 929
Paducah, KY 42002-0929

Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KY 40601

Honorable Doug Beresford
Hogan & Hartson
555 Thirteenth Street, NW
Washington, DC 20004

Honorable Frank N King, Jr.
Attorney at Law
Dorsey, King, Gray, Norment &
Hopgood
318 Second Street
Henderson, KY 42420

Brevitz Consulting Services
3623 Southwest WoodValley Terrace
Topeka, KS 66614